

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL

PRESCRIPTION OPIATE

LITIGATION

This document relates to:

See cases listed in Exhibit A to
Mot. for Leave to Amend to Add
Express Scripts Defendants

MDL 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

DECLARATION OF J. CONROD IN SUPPORT OF THE
OMNIBUS MOTION FOR LEAVE TO AMEND TO ADD
EXPRESS SCRIPTS DEFENDANTS

DECLARATION

1. My name is R. Johan Conrod, Jr., and I have personal knowledge of the matters set forth in this Declaration.

2. I am currently a partner with The Cicala Law Firm PLLC. I have served, with others, as counsel of record for plaintiff Jefferson County, Missouri in its opioid litigation *Jefferson County, MO v. Dannie E. Williams, M.D., et al*, Case No. 20-JE-CC00029 (Jefferson Cnty. Cir. Ct., Mo.) (“JeffCo Action”) against OptumRx, Inc. (“OptumRx”) and Express Scripts, Inc. (“Express Scripts”), among other defendants, since May 18, 2020.

3. I am familiar with the docket and discovery proceedings in the JeffCo Action.

4. The JeffCo Action was remanded to Missouri state court by order of this Court dated July 24, 2019 (Dkt. 1987).

5. At the time of remand and thereafter, the JeffCo Action included 44 defendants: opioid manufacturers, distributors, pharmacies, physicians, and pharmacy benefit managers (PBMs), including Express Scripts. The majority of the allegations in the First and Second Amended Petitions filed in the JeffCo Action focused on the activities of the non-PBM defendants. For example, the first 198 pages of the 254-page Second Amended Petition focuses primarily on the activities of the manufacturer defendants and general background of the opioid epidemic.

6. Motions to dismiss were filed in the JeffCo Action by virtually all defendants, including the PBMs. The motions were briefed, argued and, with one exception, ultimately denied by orders entered on July 8, 2020 (as to First Amended Complaint) and December 3, 2020 (as to Second Amended Complaint). The exception involved a common law claim of fraud against the PBM Defendants, which was dismissed without prejudice (over the PBM Defendants' objection that the count should have been dismissed with prejudice). *See* Dec. 3, 2020 Order as to Pharmacy Benefit Manager Defendants' Motion to Dismiss Plaintiff's Second Amended Petition.

7. Express Scripts began producing documents in the JeffCo Action in February of 2021; however, in total Express Scripts produced fewer than 1,000 documents in 2021.

8. The vast majority of documents were produced in 2022 or later.

9. Specifically, in 2022 Express Scripts produced 64,410 documents. In 2023, Express Scripts produced 8,463 documents.

10. Documents produced by Express Scripts in the JeffCo Action were subject to a Protective Order entered in that case and were not shared with counsel who did not appear in the JeffCo Action.

11. The first deposition of an Express Scripts witness on substantive matters in the JeffCo Action was conducted on February 7, 2023 (Kelcey Blair, *see* ESI_MDL_000000001). Depositions continued through the fall and early winter of 2023.

12. Express Scripts' corporate representative on topics of "Formularies and Utilization Management," "committees involved in formulary construction," and descriptions and use of utilization management tools such as CDUR (concurrent drug utilization review), RDUR (retrospective drug utilization review), and RationalMed, Andrew Behm, was deposed on May 26, 2023 (*see* ESI_MDL_000005929).

13. As of the fall of 2023, claims against all the defendants in the Jefferson County Litigation other than OptumRx and Express Scripts had been resolved through settlement, bankruptcy filings, or other action.

14. Our firm also serves as counsel for other plaintiff counties and cities in opioid litigation whose cases have been transferred to this MDL. The last such case to be so transferred to the MDL was for plaintiff Arlington County, Virginia. That transfer occurred on June 8, 2021, after the Fourth Circuit Court of Appeals held that removal from state court by certain PBM-related defendants was proper under federal officer removal jurisdiction.

15. The Webb County (CT15) and Rochester (CT12) Amended Pleadings (Webb Dkt. 110 and Rochester Dkt. 110) directly rely upon documents and information from Express Scripts' JeffCo Action production in key allegations.

16. For example, the Amended Pleadings include the following allegations that are based on information in JeffCo Action documents or depositions:

- Express Scripts contracts not only provided for rebates from drug manufacturers, but more specifically, provided that Express Scripts would not receive rebates, or would receive lower rebates, if access to opioids were restricted by such measures as prior authorization requirements, co-pay differentials, or reduced (that is, not preferred) formulary status. Rochester Amended Pleading ¶ 296.¹
- The Express Scripts Defendants recognized no later than 2008 that they needed to do something about OxyContin abuse, but failed to act for another decade, in order to protect the rebates they earned from opioid prescribing. Rochester Amended Pleading ¶¶ 279, 307, 408-11, 414.²
- Express Scripts worked with Purdue to spread misinformation about the safety and efficacy of opioids. Rochester Amended Pleading ¶¶ 351, 378.³
- The Express Scripts Defendants had vast amounts of data that allowed them to identify problems of prescription abuse that

¹ The JeffCo Action material supporting this allegation includes: ESI_JEFFCOMO_000250248.

² The JeffCo Action material supporting this allegation includes: ESI_JEFFCOMO_000273681; ESI_JEFFCOMO_000278190; ESI_JEFFCOMO_000278192; Gross Dep. 55-56, 74 (ESI_MDL_000001125), Gross Dep Ex. 4 (ESI_MDL_000492597); ESI_JEFFCOMO_000259907; ESI_JEFFCOMO_000299137; ESI_JEFFCOMO_000003092; ESI_JEFFCOMO_000265250; ESI_JEFFCOMO_000029922; ESI_JEFFCOMO_000178613.

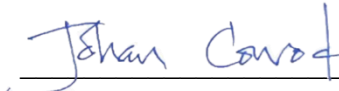
³ The JeffCo Action material supporting this allegation includes: ESI_JEFFCOMO_000012632 at slide 56; ESI_JEFFCOMO_000032900.

they did nothing to address. Rochester Amended Pleading ¶¶
440-41.⁴

17. Even where documents from the JeffCo Action are not specifically cited, information learned from discovery in the JeffCo Action forms the basis for certain allegations in the Amended Pleadings. Upon review of the Amended Pleadings, at least 180 allegations regarding the conduct of OptumRx and Express Scripts are based either expressly or implicitly on documents and information from the JeffCo Action.

I declare that the foregoing is true and accurate to the best of my knowledge and understanding under penalty of perjury of the laws of the United States of America.

Dated: July 29, 2024

By: 
R. Johan Conrod, Jr.

⁴ The JeffCo Action material supporting this allegation includes: Nader Dep. Ex. 10 (ESI_MDL_000492391); ESI_JEFFCOMO_000135448; ESI_JEFFCOMO_000203517; ESI_JEFFCOMO_000203553.